THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

FEDERATION OF SAINT CHRISTOPHER AND NEVIS

SAINT CHRISTOPHER CIRCUIT

(CIVIL)

CLAIM NO. SKBHCV2010/0084

IN THE MATTER OF THE LAND ACQUISITION ACT, CAP 273 OF THE LAWS OF ST. CHRISTOPHER AND NEVIS
AND IN THE MATTER OF A JUDGMENT OF THE BOARD OF ASSESSMENT FOR THE PROPERTY KNOWN AS "THE ANGELUS"
AND IN THE MATTER OF AN APPEAL BY RICHARD ROWE AND MARK SECRIST AND OTHERS

BETWEEN:

RICHARD ROWE & MARK SECRIST
(and those whom they represent)
ROY AND GEN BENTON
PAUL AND CHAE DUNN ***Claimants/Appellants***

And

THE ATTORNEY GENERAL OF ST. CHRISTOPHER AND NEVIS
THE AUTHORISED OFFICER FOR THE ANGELUS RESORT
Defendants/Respondents

And

(1) ST. KITTS-NEVIS-ANGUILLA NATIONAL BANK LIMITED
(2) ROSALIND NICHOLLS
(3) CONSTANCE MITCHAM
(4) PEARLINE O. SYLVESTER ***Interested Parties***

Appearances:

Mr Daniel Wise for the Appellants
Mr Arudranauth Gossai for the Respondents
Mr Emile Ferdinand and Mr Damien Kelsick for St. Kitts Nevis and Anguilla National Bank
Mr Courtney Abel for the Interested Parties

2010: November 29
2011: July 29

JUDGMENT

[1] **THOMAS J:** This matter involves in effect two sets of appeals, one by the Appellants being: Richard Rowe and Mark Secrist, Roy and Gen Benton and Paul and Chae Dunn, on one hand, and on the other, St. Kitts Nevis and Anguilla National Bank Limited, Rosalind Nicholls, Constance Mitcham and Pearline O. Sylvester, the interested parties. Given the foregoing, the appeals will be treated separately.

Background

[2] The very nature of this matter requires that some of the attending events be noted. A summary provided by the Board of Assessment in its award of 25th March 2010 is as follows:

(1) "On 8th September 2006, the Government of the Federation of St. Kitts and Nevis issued Statutory Rule and Order Nos. 21, 22 and 23 of 2006 evincing an intention to acquire three parcels of land (hereinafter 'the subject lands") in the Parish of St. George, in the Island of St. Kitts for a public purpose. The subject lands included a condominium project that was originally called "Paradise Beach Resort" and latterly "The Angelus". SR&O No. 21 of 2006 applied of land at Frigate Bay Estate comprising 15.032 acres; SR&O No. 22 of 2006 applied to a nearby parcel of land measuring 5.000 acres; and SR&O No. 23 of 2006 applied to a third parcel of land measuring 1.5027 acres.

(2) One 28 December 2006, the Government, acting under section 3 of the Land Acquisition Act, (hereinafter "the Act") made three declarations published in the *Official Gazette* compulsorily acquiring the subject lands for a public purpose. By virtue of Section 3(3) of the Act, the Government became the owner of the subject lands on 18 January 2007. Mrs Beverly Williams, Comptroller of Inland Revenue, was appointed the Authorised Officer for the purposes of the Act.

(3) Despite protracted negotiations, the issues of entitlement to and amounts of compensation were not agreed upon by the persons claiming an interest in the subject lands (hereinafter "the Claimants") and the Authorised Officer.

(4) Where such a situation arises, the Act at section 11(1) makes provision for the Governor-General to establish of a Board of Assessment to deal with issues of entitlement to and amounts of compensation. On 11 July 2008 His Excellency the Governor General appointed a Board of Assessment comprising Mr Don Mitchell CBE QC, Chairman, and Mr Edwin Glasford, Member. There were only two persons on the Board at that time as the Claimants failed to agree on a single nominee. On 18 December 2008, the Governor-General appointed Mr Joseph Lancaster to the Board of Assessment. The establishment of the Board and the appointment of members to it were published in the *Official Gazette* on 31 December 2008".

High Court as Appellate Court

[3] Section 17(3) of the Land Acquisition Act ("the LAA") gives a right of appeal to the High Court against a decision of a Board of Assessment. For this reason, it is necessary to outline the approach of an appellate Court generally.

[4] **In Evans v Bartlam**[1] the ruling in this regard read thus:

"While the Court of Appeal will not normally interfere except on grounds of law with the exercise to the judge's discretion, it is seen that on other grounds his decision would result in injustice being done, the Court of Appeal has both the power and duty to remedy it".

[5] Also **in Dufour and Others v Helenare Corporation**[2] Chief Justice Vincent Floissac in an analysis of the approach taken in hearing an appeal outlined certain basic principles. This is what he said:

"We are thus here concerned with an appeal against a judgment given by a trial judge in the exercise of a judicial discretion. Such an appeal will not be allowed unless the Appellate Court is satisfied (1) that in exercising his or her judicial discretion, the judge erred in principle either by failing to take into account or giving too little or too much weight to relevant factors and considerations; and (2) that as a result of the error, in principle the trial judge's discretion exceeded the generous ambit within which disagreement is possible and may therefore be said to be clearly or blatantly wrong".

[6] While the Board of Assessment is not part of the High Court it is nevertheless as Tribunal established by law with statutory powers to determine rights to compensation for property acquired by the state. Therefore the principles outlined are applicable.

Appellants Grounds of Appeal

[7] The following are the Appellants' Amended Grounds of Appeal of 14th July, 2010:

a. Ground 1, The pool: the Board erred in finding that the pool was of value but in failing to ascribe it any value;

b. Ground 2, Block D: the Board erred in finding that Block D was part of the "common areas" and that therefore the value for Block D was split between all the owners of condominium units;

c. Ground 3, National Bank interest: the Appellants contend that interest on the National Bank's mortgages should accrue at no more than 4% per annum for the date of acquisition;

d. Ground 4, Failing development: the Board wrongly took into account certain evidence and concluded that the Resort was a failing development at the material time;

[1] [1937] AC 473
[2] [1996] 52 WIR 188

e. Ground 5, Mitcham/Nicholla/Sylvester sales: the Board wrongly took into account these sales as evidence of the correct value of condos at the Resort, at the material time;

f. Ground 6, Y2 383: the Board wrongly applied a discount for "failing development" to the parcels of land entitled Y2 382 and Y2 383. These parcels could not have been a failing development as they were not part of the condominium development; and,

g. Ground 7, Overall calculation: the Board wrongly understood a figure of $12,890,000.00 to be Ms Low's valuation figure for the whole Resort. In fact, the figure excluded 29 of the condominium units.

The Grounds of Appeal must now be addressed seriatim

Ground 1: The Pool

Submissions:

[8] The following are the submissions on behalf of the Appellants:

"With regard to the pool, the Appellants contend that the Board was correct to find (at [78]) that the pool had value. However, the Board was wrong to find (at[78]) that it was unable to quantify the value of the pool for the purposes of making an award, and that it would therefore not award any compensation for the value of this service to any of the owners of the "common areas" inter alia:

a. The Claimants made a claim for compensation for this service;

b. The Board and the Authorised Officer both accepted that this service was of value;

c. The Land Acquisition Act and the Constitution provide that fair compensation must be paid for all interests in land;

d. The Board gave no indication during the hearings that it would adopt a methodology of assessment whereby it would break down the Resort's services individually;

e. The Board gave no indication during the hearings that it considered that insufficient evidence had been put before it to enable it to value the pool individually;

f. The Board was wrong as a matter of fact to state that it could not place a value on the pool; and/or,

g. The Board was wrong in law to conclude that the pool was of value, but that it would not award compensation for this service.

[9] In further submissions on behalf of the Appellants, against the backdrop of the two Expert Reports on the swimming pool filed in the matter, these further contentions are advanced:

8. It is respectfully submitted that it would be unjust to reduce the compensation for the swimming pool to the bare cost of building the pool as at 18th January 2006. Sections 19 (a) of the LAA requires that "the value of the land shall...be taken to be the amount which the land, if sold in the

open market by a willing seller, might have been expected to have realized" at the material date, 18th January 2006.

9. Consequently, the compensation to be awarded for the swimming pool must take into account the impact of the addition of the pool on the market value arrived at by the Board (or any such higher value that this Honourable Court considers just).

10. It is respectfully submitted that the Appellants' expert report is to be preferred to that of the Authorised Officer for the reason that it takes into account the effect upon the market value of the Resort, given the figure arrived at by the Board. Mr. Docherty has therefore taken note of this Honourable Court's Direction at Clause 4(f) of the Directions Order of 29th July 2010.

11. Further, Mr. Docherty is Director of the same company that performed a valuation for the Resort as a whole (the "first BCQS Report"). Mr. Docherty adopted the same methodology and approach as was adopted in the first BCQS Report.

12. The first BCQS Report was preferred by the Board above all other reports. The Board found:

> *The Board prefers the approach to valuation taken by BCQS over all the other values." (Award at paragraph 69).*

Further, the BCQS Report was *"was very professionally prepared"* (Award at paragraph 39).

13. It is submitted that similar conclusions should be drawn in relation to Mr. Docherty's report. Mr Docherty was also able to consider the valuation that Ms. Low would have apportioned to the swimming pool had it been a separate line item.

14. Mr. Docherty intends to provide a written response to the Authorised Officer's valuation of the pool, in which he raises a number of issues with the Authorised Officer's report. The Appellants respectfully invite this Honourable Court to draw its own conclusions from the evidence before it".

[10] For the Respondents the submissions are as follows:

"62. At Ground 1, the Appellants contend that the Board was wrong to find that it was unable to quantify the value of the pool for the purposes of making the award.

63. However, what the Board actually stated was that the pool was not separately valued or measured by either the expert for the Government or the Appellants. [See p. 36 para. 78 of the Award of the Board].

64. It is accepted that the pool and the Authorised Officer's Expert Report on the value of the swimming pool was filed on 1st October 2010 and served on all parties.

65. The Authorised Officer's Expert valued the pool at EC $544,423.85, however this figure has been adjusted to EC $657,475.00 (US $243,509.26) as the initial value, due to an oversight, did not include plastering of the internal walls and painting.

66. BCQS, the Appellant's Expert, valued the pool at US $745,000. This value included the amount of US $25,000 for landscaping and US $124,000 for entrepreneurial profit.

67. The value of the pool by BCQS less the amounts for landscaping and entrepreneurial profit would amount to US $596,000.

68. It is clear that the two Experts differ significantly in their Bill of Quantities.

69. Since this issue can only be resolved by the Experts themselves, the Authorised Officer's Expert will endeavour to provide comments on the BCQS Report and further submissions on this would be made at the trial.

Analysis

[11] At the core of this issue is the following contained at paragraph 77 the Board's Award:

"The pool was not separately valued or measured by either of the valuers. Mr Williams in cross examination explained that he had not included it in the general calculations. The Board recognizes that the pool has value, but has not been able to quantify this value for the purposes of making an award".

[12] This accounts for the Appellants' basic submission that the Board was wrong in failing to place a value on the pool. But while the Respondents agree that the pool has value, the question becomes what should the value be for purposes of compensation.

[13] In this regard the Appellants submit that it would be wrong to reduce the compensation for the swimming pool to the bare cost of building the pool as at 18th January 2006. Instead, it is contended, the compensation 'must take into account the impact of the addition of the pool on the market value arrived at by the Board (or any such higher value that this Honourable Court considering just)'. And for this reason the Court is urged to prefer the expert report prepared by Mr Docherty, being the BCQS Report.

[14] One of the main reasons advanced by the Appellants for urging this preference are that the BCQS Report was preferred by the Board above all other reports. Another reason is that it takes into account the effect upon the market value of this resort given the figure arrived at by the Board. On the other hand, the Respondents urge a preference for the Authorized Officer's expert report and its adjusted value of US$243,509.28. This contrasts with the Appellants' Expert Report which places a value of US $745,000.00, inclusive of US$25,000.00 for landscaping and US$124,000.00 as an entrepreneurial profit.

[15] Mr Gossai for the Respondents identifies the following matters as reasons why the Appellants' Expert Report should be rejected: the entrepreneurial profit, the differences in the bills of quantified and a concession concerning the cost of pool construction in St. Kitts and Nevis. These will be examined in turn.

Entrepreneurial Profit

[16] In the BCQS Report this matter is dealt with in this way:

> "Notwithstanding the fact that the cost approach has been adopted in are professional opinion, an allowance for the benefit derived from this pool being part of an operational Resort should be made. The percentage allowed reflects that associated with a reasonable entrepreneurial profit in the construction of a swimming pool as a central facility of a Touristic Resort".

[17] Further, in the response to the Douglas Report, Mr Docherty of BCQS this observation is made:

> "The Douglas Report makes no allowance for entrepreneurial profit which would lead to the question of the purpose of building the pool. As of 2006 we have allowed a developers profit of 20% which we believe is a reasonable assumption of profit, as a developer in the business of making a profit in St. Kitts. In our opinion, a developer would look for a similar return irrespective of where the pool is built".

[18] In contrast, the Evaluation of BCQS Report[3] Douglas Report – it is reasoned that the benefit of the pool is seen as an enhancement to the property value and not vice versa. The pool is an integral part of the property, and in my view the pool value is not enhanced by virtue of its being part of the resort unless the pool existed as a separate income generator".

[19] The Court agrees with the reasoning in the Douglas Report that a pool is an integral part of the property and enhances it. As such, the question of an entrepreneurial profit for the pool's construction does not arise. As the Respondents contend, such a profit is unfounded.

Differences in bills of quantities

[20] In response[4] to the Douglas Report the following comment is made by Mr Docherty:

"The methodology adopted by Mr Douglas, is in general, similar to our own and we recognize and understand this method. However there is still a number of areas where we find our figures at odds with the Douglas Report".

[21] At a later stage in the response two concessions are made with respect to the cost of concrete and steel. This is the nature of the concessions at page 3:

> "We partially concede on our concrete rates, but remain of the opinion that Douglas Report rate allowance for concrete, placed, (i.e. delivered to site, poured,

[3] At page 3
[4] Dated 23 November, 2010

raked, formed, subsequent cleaning and contractors overhead), is too low. In recognition of the Douglas Reports comments, and following the review of our cost indices, we have reduced our concrete rate to US$250/ CY, placed.

Regarding our steel rate, we have allowed US$2.40/lb for straight bars, and US$3.00/lb for curved bar. At January 2006 prices, and taking into account the average, in the region of US$1.00 per square foot. We must add to this cost, labour for steel bending and fixing, small tools, contractors site and head office overhead. We have allowed a small concession against our rates in recognition of the Douglas Report and subsequent comments".

[22] Accordingly, in relation to pool concrete in the revised bill of quantities the rate is reduced from $350.00 CY to $250.00 CY and the totals for ground beams, pool glass and pool walls are reduced from US$4,550.00, $29,050.00 and $15,750.00 to US$3,250.00, $23,613.33 and $10,000.00, respectively. A number of other items are also reduced. Included is the cost of clearing the site from US$12,000.00 to US$8180.00.

[23] In the Douglas Report in addressing the Limitations of Appraisal' it is stated in part as follows:

> "No technical drawings were available for the pool and hence assumptions had to be made that best practices were used in the construction of the pool. Some of the underlying assumptions made to arrive at a reasonable cost included the following:
>
> i. Concrete strength was a minimum of 3500 psi at 28 days
>
> ii. Reinforcement of the pool slab has 12mm bars at a maximum spacing of 300mm both ways
>
> iii. Pool will is constructed from a double layer of reinforced 12mm bars based on the size and physical characteristics of the pool
>
> iv. Pool deck is constructed on well compacted selected fill material and is reinforced with heavy gauge welded fabric".

[24] As noted before, in the BCQS response to the Douglas Report. It is stated that the methodology adopted by Mr Douglas is in general similar to our own and the method is recognized and understood. Perhaps for this reason some attempt is made in the BCQS response to explain the differences in costs and then the concessions. But these are not mere concessions. They relate to a basic yet fundamental items used in the construction of the pool. It is pool concrete and the difference between the two quantities is US$100.00 CY. Added to this is the reduction in the cost of clearing the land from US$12,000.00 to US$8.100.00 plus other reductions.[5]

[25] The foregoing lends credence to the Respondents' contention that these rates in the BCQS Report are inflated[6]. Also in the Evaluation of the BCQS Report it is stated that: "The figures in the BCQS Report are inflated and some of the reasoning is not

[5] See Summary of changes in the BCQS Response to the Valuation Report submitted by the Authorized Officer compiled by Errol Douglas dated 29th September, 2010

[6] At page 17

founded". This must be seen against the backdrop of the Douglas methodology which is recognized and understood by Mr. Docherty.

[26] Therefore, these concessions and consequential reduction, the granting of the entrepreneurial profit and the further concession by the Respondents that the cost of constructing a pool is lower in St. Kitts when compared with BVI and Turks and Caicos Islands.[7]

[27] This leads to the conclusion that this Court accepts the Douglas valuation of the pool of US$243,509.26 in contrast with the BCQS value of US$815,731.06.

[28] It means therefore that the additional US$243,509.26 must be paid in compensation which must be apportioned.

Apportionment

[29] By virtue of section 11(1) of the LAA a Board of Assessment has the duty to award compensation and to apportion said compensation. Accordingly, it is the Order of this Court that the matter be referred to the Board as constituted on 31st December, 2008, or re-constituted, if necessary, in order that it may apportion the additional compensation of US$243,509.26 among the persons awarded compensation under the award 25th March 2010.

Ground 2: Block D

Submissions

[30] The following submissions were advanced on behalf of the Appellants:

> "6. With regard to Block D, the Appellants contend that the Board erred in law in finding (at [78]) that the partially completed Block D, which had not yet been declared as part of the condominium, comprised part of the "common areas" and therefore formed part of the unit entitlement of all the owners of Units in Blocks A, B, C as "the consequence of its having been constructed on the condominium lands". Inter alia:
>
> a. By Article II section 2 of the Conditions, Covenants and Restrictions of the Resort, *"the Declarant is empowered...to sell, mortgage or lease units", and by Article II section 4, "in the event that there are any unsold units ... the Declarant retains to be the owner thereof ... ";*
>
> b. Block D comprised units, none of which had yet been sold. These therefore accrued to Rowe and Secrist and did not form part of the "common areas".

Analysis

[31] At paragraph 72 of the Award of the Board the property acquired by the Government is divided into categories including, 12.3285 acres Y2 -69 including Block D. The narrative as to "Owners" reads: "The common areas by virtue of the

[7] See also, Evaluation of BCQS Report at page 12 re cost of tradesmen in St. Kitts

Covenants, Conditions and Restitution and the provisions of the Condominium Act. This land forms part of the entitlement of the Condominium owners according to their percentage on completion of the first 3 buildings and is included in the award made to them".Further, at paragraph 78 of the said Award it is stated in part that: "We included Block D as part of the Unit entitlement of the owners of Units in Block A, B, C as we understand this to be a consequence of it having been constructed on the Condominium lands".

[32] The foregoing represents the essence of the reasoning applied by the Board to Block D. And it shows that the Covenants, Conditions, and Restrictions plus the Condominium Act were considered by the Board. Added to this is a certain 'understanding'.

[33] Given the foregoing the Court does not consider that the Appellants have advanced any or any sufficient basis to disturb the determination by the Board regarding Block D.

Ground 3: National Bank's Rate of Interest

Submissions

[34] The following submissions were made on behalf of the Appellants.

7. With regard to the issue of the rate of interest chargeable by the National Bank on its mortgages, the Appellants contend that

   a. In the event that the Board failed to make a finding as to whether interest on the mortgages of National Bank should be calculated at 11% or 4% *per annum*, from the date of the compulsory acquisition, the Board erred in law in that failing; alternatively,

   b. In the event that the Board made a finding that interest should accrue on the mortgages at 11% per annum, from the date of acquisition, the Board erred in law in so finding, and interest should be chargeable at no more that 4% *per annum*, from the date of the compulsory acquisition, in accordance with the Land Acquisition Act;

   c. To the extent that the Board made a finding that interest should accrue on the mortgages of National Bank at 4% from the date of the compulsory acquisitions, the Appellants do not appeal that decision.

[35] Written submissions were filed on behalf of the St. Kitts-Nevis-Anguilla National Bank, and following are the salient parts:

1. The sole issue raise by the Appellants in this appeal is a pure question of law, namely: do the provisions of the LAA require that the compensation payable to National Bank be calculated at an interest rate other then the agreed mortgage interest in respect of the periods, either:

   a. After the compulsory acquisition was effected, or

   a) After the stated date of valuation.

2. Nowhere on the Award of the Board it is said that 'the National Bank interest on its mortgages at an annual rate of 4% from the date of acquisition ...' The Appellants' written submissions describe this as their primary contention'.

3. The National Bank contends that the aforesaid 'primary contention' of the Appellants ought to be reflected by this Honourable Court for the reason that the Board made no such ruling that the National Bank be awarded interest on its mortgages at an annual rate of 4%.

4. It is respectfully submitted that the National Bank is entitled to compensation consisted with the calculations articulated in ... Table 3 as no other evidential calculations were ever adduced before the Board by the Appellants.

5. Contrary to the Appellants assertion, it is not the Board which is awarding National Bank interest at the rate higher than 4%. The interest rate to which the National Bank is entitled is that which the registered proprietor agreed to in the mortgage documentation.

6. It would be a violation of National Bank's legal rights under its mortgages to hold that the interest rate payable to National Bank is reduced by implication as a consequence of section of the LAA. Section 21 does not speak to a mortgagee's rights and it would be a strained interpretation to hold that it does so.

7. Neither the Board nor, with the greatest possible respect, this Honourable Court has any legal authority to seek to rewrite the terms of the mortgage agreements entered into between the registered proprietors and National Bank, and the Board did not seek to do so.

Analysis

[36] The Court considers, with due respect to the submissions advanced by learned counsel on both sides, that the answer to the issue falls to be determined within a narrow compass.

[37] It is appropriate to begin with or dictum on the purpose of land acquisition. To this end Lord Nicholls of Birrenhead in **Walter v Welsh Development Agency[8] said this:**

> "My Lords, compulsory purchase of property is an essential tool in a modern democratic society. It facilitated planned and orderly development. Hand in hand with the power to acquire land without the owner's counsel is an obligation to pay full and fair compensation". This is axiomatic ..."

[38] Section 8(1) of the Constitution of the Federation of Saint Christopher and Nevis prohibits the compulsory acquisition of property except for a public purpose and by or under the provisions of a law that prescribes the principles on which and the manner in which compensation therefore is to be determined and given.

[39] It is common ground that in the case of Saint Christopher and Nevis the law is the Land Acquisition Act, which was referred to above and which does comply with the prescriptions of the Constitution in this connection especially at section 19 of the LAA.

---

[8] [2004] 1 WLR 1304

[40] To the point, section 21 of the LAA is in these terms:

> "The Board in awarding compensation may add thereto at the rate of four per centum per annum, calculated from the date upon which the authorized officer entered into possession of the land acquired until the date of payment of the compensation awarded by the Board".

[41] The narrow issue, in the view of the Court falls to be determined essentially or the meaning and effect of the words, 'vests absolutely in the Crown' and the effect of section 21 of the LAA.

Vests absolutely

[42] The words 'vests absolutely' simply mean that once the statutory requirements are satisfied[9], the land vests without encumbrances with the balance being the payment of fair compensation. In Black's Law Dictionary at page 9 "absolutely" is defined as: Completely, wholly, without qualification, without reference or in relation to on dependence upon any other person or event.

[43] Therefore, for the purposes of the Crown the only relevance of the mortgage is with respect to the apportionment of the compensation. The National Bank may still have rights against the mortgagor but none against the Crown so long as the compensation is paid commensurate with the mortgage debt. This was alluded to by the Board.

[44] The Governing proposition in this regard is that the LAA is an existing law that is saved by the Constitution so that the question of violation of the Bank's rights cannot be an issue. Rather, it is an exception to the right to property that has withstood the test of time. It is therefore beyond argument.

Interest

[45] As noted before, section 21 of the LAA prescribes a rate of 4% which the Board "may" award ('a mandatory may[10]) in granting compensation. Grave doubt is cast on this provision, in effect, in light of the obligations of the mortgagor under the mortgage deed.

[46] It cannot be that a mortgage can be excluded or was intended to be excluded from this legal matrix and with that said the Court must reject learned counsel for the National Bank's submission that it the Bank is not paid the rate of interest contracted it could amount to re-writing of the mortgage and as much a violation of the Bank's rights. But Parliament has spoken and it is the rate of 4% which is applicable in this context. And it cannot be that a mortgage deed can stand on higher ground than an Act of Parliament.

[47] While a higher rate may be award, this depends solely on the prescription of Parliament. This is reflected in a 6% award in the Privy Council decision in **Garry v Attorney General of Grenada[11].**

---

[9] In Watts v Governor General Vol. 1 OECS Law Reports 451. The High Court of Grenada ruled that the land sought to be acquired did not vest in the Crown as the declaration as to the purpose was invalid and ineffective.

[10] Being a power coupled with a duty, see: Julius v Bishop of Oxford [1880] LR 5 App Cas 214

[11] [2001] UK PC 30

Much earlier in **Grand Anse Estates v Governor General of Grenada**[12] the learned Justice of Appeal St Bernard examined the question of interest: He looked at the ideal but then came back to the legal reality. These are his words:

> "Section 21 also places a limitation in aspect of the interest to be awarded to the owners by the Board. The rate of interest is fixed at five per centum. Counsel for the Respondent submitted that this should have been raised in the lower Court and that it was for the Appellants to show that it did not amount to full compensation. In my view since there is that limitation in the section it was for the Respondent to show that the five per centum was full compensation – In my opinion the interest at a rate applicable to give the expropriate to give a first equivalent of his loss at the time of the expropriation and a rigid and fixed rate whatever his cost may be. The Board of Assessments hands are tied in the matter and whatever the loss of the owner it cannot award any interest at a higher rate. It would be different if the provision empowered the Board to fix four per centum on such other rate as would compensate the occasioned by the acquisition. I am of the opinion that this section imposes a fetter or limitation on the Board, whatever the evidence may be".

[48] In the same case Peterkin J.A., as he then was, also had this to say on the issue: "I do not think it necessary to deal with this further question of interest provided for in section 21 of the Condominium save to state that I would agree with the conclusions arrived at concerning this aspect by St. Bernard, J.A.".[13]

[49] Thirty four years later in St. Kitts and Nevis a Board of Assessment in the same context, including the legislation, ruled as follows:

> "(65) It is the view of the Board that the interest of the St. Kitts Nevis Anguilla National Bank is at most a security interest registered against the titles to the properties in question. The bank cannot recover from the Government more than the Government is required to pay the various Claimants to title to the mortgaged properties. It will be a matter for the bank and the mortgagors to sort out between themselves, with the assistance of the Court, if necessary, what other amounts are due from the mortgagors to the bank. The amounts of compensation due to the bank are to be deducted from the amounts awarded to the property owners in question. If there is any shortfall not covered by the amount of the award to the particular Claimant, that is the risk that the bank took in accepting the security, and the Government is and required to make up the shortfall. In this view of the Board, there is no additional amount that is to be calculated to compensate the bank outside of what is due to be paid to the various Claimants whose properties are mortgaged".

[50] Logically, the Board went on to rule that: "All successful Claimants are entitled to be paid 4% interest on their award from the date of acquisition, 18 January, 2007".

[51] It is the same tune but on different occasion: the Board's hands are tied by Parliament with the blessings of the Supreme Law. And the Court notes with

---

[12] Vol. 1 The OECS Law Reports 441, 447

[13] Ibid, at page 450

interest that no authority whether binding on persuasive, which holds that in the context of an acquisition of mortgaged property, the contractual rate of interest under the mortgage deed is the rate of interest payable by the Government.

[52] This ground of appeal is dismissed.

Grounds 4 and 6 will be dealt with together

Ground 4: Failing Development

Submissions

Ground 4

[53] The Appellants' submissions on this ground are in these terms:

> "8. The Appellants contend that the Board was wrong as a matter of fact and/ or law to accept the Authorised Officer's argument and make a finding (at, inter alia, [26], [36] and [40] that the Resort was, at the material time of 18 January 2006, a failing development, which accordingly depressed the Board's valuation. This was for two reasons: (a) erring as to which facts were in dispute between the parties, and (b) erring as to the evidence that Mr. Williams was purporting to give.
>
> 9. (a) Failing development – facts in dispute: The Appellants contend that:
>
> a. The Board erred in fact and/or law in findings, (for example at [26]), that "there is [sic] no dispute that the Angelus Project was a failed one at the prescribed date, further development of which had been stymied by poor management, litigation and conflicting claims;
>
> b. On the contrary, the Appellants did not accept that the Angelus Project was "a failed one" at the prescribed time, and the same was clear from their written submissions, expert valuation and lay evidence, and their cross examination questions.
>
> 10. (b) Failing development – Evidence of Mr. Williams: Further or alternatively, the Appellants contend that:
>
> a. The Board erred in fact and/or law in finding (at [31]) that "Mr. Williams testified before the Board on 18 December 2009...we accepted his testimony that The Angelus ... (2) that [sic] due to bad management, the project had the reputation of a failed project at the time prescribed for valuation. These factors would have negatively impacted the market value of the property at the prescribed date;
>
> b. On the contrary, Mr. Williams only visited the Resort in November 2006, and prepared his report as of 30 December 2006. He accepted openly on a number of occasions in oral evidence that he was not giving, nor purporting to give, evidence as to the Resort at the material time;

c. The Appellants therefore contend that the Board erred in fact and/ or law in accepting Mr. Williams' testimony as evidence of the condition of the Resort at the material time;

11. There was no evidence from which the Board could have reasonably concluded that the Resort was, at the material time, a failing development. The only evidence of the condition of the Resort at the material time was the evidence of Mr. Fraites and Mr. Sentz, both of whom stated that it was in a good condition at the material time. The Board therefore erred in concluding that the Resort was, at the material time, a failing development".

Ground 6: Y2 382 and Y2 383 – Failing Development and for Free-Fall

Submissions

[54] The following are the Appellants' submissions:

Ground 6: Y2 382 and Y2 383

14. With regard to YZ 382 and Y2 383:

a) At [76] the Board applied the same price of $5 per square foot to the land in parcels Y2 382 and Y2 3838 as in Y2 69;

b) Y2 382 and Y2 383 did not form part of the condominium development;

c) The Appellants therefore contend that even if the Board was correct to find that the condominium development was, at the material time, a failing development and/or the Mitcham/Sylvester/Nicholls sales were cogent evidence of free falling prices upon which the Board could rely with regard to Y2 69, the Board erred in fact and/or law in finding that these factors could apply to Y2 382 and Y2 383;

d) On the contrary, such factors had no application as Y2 382 and Y2 383 were outside the area affected by any such conditions of failing development or free fall in prices, not being within the condominium development.

The submissions on behalf of the Respondents are as follows:

76. At Ground 6, the Appellants contend that the Board ought to have applied a different rate for the underdeveloped lands as against that for the developed lands.

77. However, all the lands form part of the entire development and the fact that buildings are on one part of the lands and not on the other part does not mean that a different value would attach to the undeveloped lands.

78. In fact, if the Appellants' arguments were to be accepted then the undeveloped lands should be given a lower value than the developed lands.

79. It is therefore submitted that the Board acted more than reasonable in awarding the same rate for the undeveloped lands as the awarded for the developed lands.

80. The rate of US$5 per square foot for the undeveloped lands as awarded by the Board should not be disturbed.

Analysis

[55] At paragraph 26 of the Award the Board made these findings:

> "26. The condominium of the subject property at the material time is relevant to the amount of compensation due to be paid by Government. There in no dispute that the Angelus Project was a failed one at the prescribed date, further developed of which had been stymied by poor management, litigation, and conflicting claims. There is a dispute as to whether some of the condominium Units had been cannibalized at the material date for valuation of 18 January 2006. Williams Architectural, the valuer of the Authorized Officer, used an assumption of cannibalization as occurred does not appear to this Board from the evidence to have affected any of the structures as at 18 January 2006, and was probably limited to fittings and fixtures. In any event, at the hearing counsel for the Authorized Officer withdrew the multipliers in question.
>
> 27. Another negative factor affecting the valuation of the subject is described by the phrase "litigation blight". The High Court in Suit No 222 of 2003[14] had granted a Freeing Order relating to the subject lands on 27 January 2006. Counsel for Rowe and Secrist argue that there was no real litigation blight affecting the value of the property at the material time of 18 January 2006 because the date is prior to the date at which the High Court granted the freezing order of 27 January 2006. In any event, counsel submitted, the freezing order expressly allowed Rowe to continue to be operated and for condominiums to be sold, though under strict conditions, and the Resort continued in operation after a fashion. It is noted however that the suit had been filed since the year 2003. The Rowe and Secrist claim against the original developer was based on an allegation that investors in the project had been the victims of a "Ponzi Scheme". This could hardly have made the project an attractive proposition to buy into. Additionally, there appear to have been other judgments awarded against the project. The claims of Michael Hobson, Derrick Fraites and Denise Stapleton were based on earlier judgments awarded against the developers".

[56] It is clear that the findings were based on testimony and cross-examination. Further, the very language being their is no dispute that the Angelus Project was a failed one at the prescribed date ...", suggests certainty in the mind of the Board.

[57] Moreover Appellate Courts are reluctant to interfere with findings of fact made by lower courts based on the rule that the trial judge (or in this case the tribunal) would have seen the witnesses and determined matters such as credibility. This is certainly the case in this instance and as such this Court will not interfere with the Board's findings accordingly Ground 4 must fail.

---

[14] Supra

[58] Similar reasoning applies to Ground 6 in that the finding leading to the price per square foot with respect to parcels Y2 382 and Y2 383 would have been made based on findings by the Board. It is the view of the Court that no cogent basis has been advanced to cause this Court to disturb the findings of the Board.

Grounds 5 and 7 will be considered together.
Ground 5: Mitcham/Sylvester.Nicholls Sales in 2005

[59] The following are the submissions on behalf of the Appellants.

"12. The Appellants contend that:

a. The Board erred in law and/or fact in finding (at [40]) that "the very advantageous prices obtained by Mitcham, Sylvester and Nicholls in November 2005 rather suggest that values were in free-fall prior to the valuation date:;

b. The Appellants made it clear (in the BCQS Report) that they considered that these sales were not at a fair, open market value, given the fraud on the part of BMT Ltd at the Resort at that time. Neither the Authorised Officer nor the Board indicated at any stage of the proceedings that this position of the Appellants; was challenged;

c. Had it been so challenged, the Appellant would have adduced evidence to demonstrate that those 3 sales were tainted by fraud on the part of BMT Ltd and therefore did not represent a fair open market value at the time, and that they therefore could not be relied upon by the Board in making a valuation;

d. Indeed the Board found (and was correct to do so) (at [68]) that it would be unfair to the Claimants to accept the Authorised Officer's submission that the Board should base its valuation of the condominium units on the prices paid by Ms. Mitcham and Ms. Sylvester and Ms. Nicholls, as the Authorised Officer's valuer had not used this procedure in arriving at the valuation, nor had other counsel been previously alerted to this proposal so that they could respond to it;

e. The Appellants were thereby wrongly deprived of the opportunity to adduce evidence and/or make submissions on this point;

f. The Appellants therefore contend that the Board erred in fact and/or law in accepting the Authorised Officer's submission that these 3 sales constituted evidence of the fair, open market prices in November 2005.

13. With regard to both Grounds 4 and/or 5 the Appellants therefore contend that the Appellants therefore contend that the Board erred in both fact and/ or law in (a) taking into consideration the factor of alleged failing development, and/or (b) relying on the sales of Mitcham, Sylvester and/or Nicholls as evidence of fair sales in the open market at the material time,

both of which negatively impacted the Board's valuation. More specifically, the Board therefore erred in fact and/or law in finding:

a. At [74], that condominium units should be valued at $90, $100, and $110 per square foot; and/or,

b. At [74], that land should be valued at $5 per square foot.

[60] In so far, as Mitcham/Sylvester/Nicholls sales in 2005 are continued, the Appellants' submissions suggest that the Board accepted or were influenced by them. This is far from the reality of the Board's position.

[61] This issue is best addressed by looking at various aspect of the Award by the Board. For instance in discussing the evidence before the Board, this is said at paragraph 31:

> "Mr Williams[15] testified before the Board on 18 December 2009 and was subjected to cross-examination by the Claimants. We accepted his testimony that the Angelus had (1) been subject to litigation blight even before the freezing order of 27 January 2006, and (2) that due to bad management; the project had the reputation of a failed project. At the time prescribed for valuation. These factors would have negatively impacted the market value of the property at the prescribed date. The Board accepted that Ms Mitcham, Ms Sylvester and Ms Nicholls had purchased units at The Angelus in November 2005 at a much reduced price. The suggestion made by the Authorized Officer was that these depressed prices reflected the true market value of the condominium units at the time of the sales".

[62] Later this is also stated:

> "The very advantageous prices obtained by Mitcham, Sylvester and Nicholls in November 2005 rather suggest that values were in free-fall prior to the valuation date. The Board had to determine and to consider what was the formula for valuation that was fairest to all the parties in this dispute",

[63] The matter of free-fall is not made in isolation by the Board. It relates to the testimony of Mr Williams which was accepted. In particular, factors such as litigation blight and the reputation of a failed project at the time prescribed for valuation.

[64] The Board made it clear as to the type of evidence that was heard or presented and critically hat there was cross-examination of valuers who submitted reports and testified orally. And findings of fact would have arisen out of such evidence.

[65] The Board outlined its approach to the determination of compensation at paragraph [64] as follows:

> "The duty of this Board of Assessment is to determine what the fair compensation due to the admissible Claimants on 18 January 2006 was, assuming an open market and a willing seller. The Board must take any peculiar characteristics of the subject land into account. Recent sales of the

[15] Of Williams Architectural

subject land into account. Recent sales of the subject land, if any will be considered as being the best evidence of value, provided they were sales in the open market by willing sellers. Additionally the Board must consider the legal character of the registered land under the Title By Registration Act".

The point about all of this is that the Board did not accept value of units purchased by Mitcham/Sylvester/Nicholls in 2005. They were characterised as being very advantageous and the Board went on to outline its approach to the question of compensation. Therefore, by implication these prices could not have been considered[16] given the circumstances found by the Board to have attended those sales.

Ground 7; Overall calculation: the Board wrongly understood a figure of $12,890,000 to be Ms Low's valuation figure for the whole Resort. In fact this figure excluded 29 condominium units.

[66] The following are the submissions on behalf of the Appellants:

117. The appellants respectfully submit that the Board erred in fact in finding that Ms. Low arrived "at a total compensation package due to be paid by the Government of **US$12,890,000.00"** (See Award at paragraph 39). The figure of US$12,890,000 was arrived at by adding together the valuation figures set out in a summary table at page 5 of Ms. Low's valuation report.

118. However, as Ms. Low stated at paragraph 2.2.2 of her report, 29 of the condominiums in blocks A, B and C were not included in her valuation. Ms. Low was only requested to provide a valuation of the Appellants interest in the Resort, in keeping with the provisions of the LAA. As such, Ms. Low considered that the total compensation due to be paid by the Government based on her valuation method was US$15,350,000. The Board therefore erred in fact in failing to consider the total compensation package as valued by Ms. Low.

119. The Board preferred Ms. Low's Report over all others:

"The Board prefers the approach to valuation taken by BCQS over all other valuers". (Award at paragraph 69)

Further;

"Ms. Low was the only one of the valuers who made an effort to calculate the values of the acquired properties as of the relevant date, 18 January 2006, and her valuation report was very professionally prepared" (Award at paragraph 39).

120. The Board considered that the Resort; but for its conclusions that (a) the Resort was a failed development on 18th January 2006, blighted by litigation and (b) the Mitcham/Nicholls/Sylvester sales were relevant and/or fair sales in the open market by a willing seller; would have been valued at US12,844,918.

[16] See para 68 of the Award

121. The figure of US$12,844,918 is approximately equal to the value the Board believed Ms. Low had provided (US$12,890,000). It is respectfully submitted that the Board implicitly accepted that Ms. Low's Report provides a fair and accurate valuation for the Resort in the absence of litigation blight and failure of the development, i.e. in reasonable, working condition. Had the Board not mistaken the valuation figure placed on the resort by the favoured BCQS Report, it would have undoubtedly increased its valuation in line with the correct valuation arrived at by the BCQS Report.

122. The Board explained a paragraph 40 of its Award that it considered Ms. Low's valuation to be too high precisely because:

"She relied too much on the sale of similar condominium units in successful condominium projects in the Frigate Bay area. We do not consider that she gave a sufficient discount due to the fact that The Angelus was a failed and litigation-blighted project, the units of which were not freely susceptible to sale by a willing seller in an open market. The very advantageous prices obtained by Mitcham Sylvester and Nicholls in November 2005 rather suggest that values in free-fall prior to the valuation date".

123. The Board provides no other reason for departing from Ms. Low's valuations or her methodology. As such, the Board ought to have applied any discounts it thought just to Ms. Low's true valuation US15,350,000. The Board made a simple arithmetic mistake as to the true total valuation that Ms. Low's favoured methodology arrived at.

124. As a consequence of this simple misapprehension, the Board arrived at a valuation figure that was US$2,460,000 lower than it would have arrived at had it taken the correct figure from Ms. Low's Report. The Appellants respectfully submit that the final award of the Board should be increased by this unjustified and clearly mistaken discount.

On behalf of the Respondents the submissions are as follows:

[67] BCQS Valuation

"81. At Ground 7, the Appellants contend that the Board **"mistakenly thought"** that BCQS valued the overall property at US$12,890,000 whereas the value for the overall property was US15,672,295. [See paras. 15-20 of the Appellants' Grounds of Appeal.]

82. It is submitted, however, that there was no mistake on the part of the Board. The Board clearly stated that Ms. Low arrived at the figures based on the various units examined by her. [See p. 19 para. 39 of the Award of the Board].

83. Further, there is no pronouncement by the Board that the figure of US$12,890,000 was the value of the overall property. Therefore, the Appellants ought not to be allowed to argue a ground which they allege the Board "mistakenly thought".

84. The total compensation package alluded to by the Board could only have applied to the Appellants. This is based on the fact that the Board had valuation for almost all the other units so it could not have concluded that Ms. Low was valuing the overall property.

85. In any event, the Board arrived at its own value of the overall property based on all the factors before it, including sales of condominium units at similar location as the Angelus.

86. While the Board stated that it preferred Ms. Low's report over the other Experts, the Board also stated that her values were too high and the Board arrived at its own value.

87. From BCQS Report it can easily be seen that Ms. Low used comparative sales of condominium units in the same location as the Angelus. However, Ms Low consistently used a higher rate for the Angelus despite the fact that at the material time the Angelus was suffering from litigation blight and management issues while other resorts were thriving and not suffering from these factors. **[See pp. 39, 40-43. 53-55, 57-58, 62** of the **BCQS Report – TAB 8 – Volume III].**

88. Further, the BCQS analysis indicated that sales of condominium units at the Angelus in 2005 ranged between US$97.84 – US4149.22 per square foot. [See p. 51 of the BCQS Report – TAB 8 – Volume III].

89. It is submitted that in 2005 there was litigation blight on the Angelus as the litigation began in 2003 and an injunction was granted in 2005 preventing the sale and/or disposal of any property at the Angelus.

90. It is therefore difficult to comprehend the increase in value placed by BCQS on the Angelus in 2006. It makes it even more incomprehensible given the fact that caveats were being entered on a regular basis between 2005 and 2006.

91. It is submitted that the purpose of compensation is to ensure that the landowner is fairly rewarded for the loss that he has suffered. It is not the intention of the Constitution that a landowner should achieve a higher value for his land. The intention of the landowner must be fairly compensated for his loss. [See Waters and others v Welsh Development Agency [2004] 1 WLR 1304 @ p. 1304 letters G-H].

92. It is therefore submitted that the award of the Board more than adequately compensate the Appellants and the other owners for the loss that they suffered as a result of the acquisition by the Government".

Analysis

[68] The reality of this ground of appeal is US$2,460,000 more compensation sought by the Appellants. But this ground is entirely misplaced as it alleges basically that the Board was mistaken.

[69] The Appellants case rests substantially on what the Board said in part at paragraphs 9 and 39 of the Award. They are as follows:

"The Board prefers the approach to valuation taken by BCQS over all other valuers.

Ms Low was the only one of the valuers of the acquired properties as of the relevant date 18 January, 2006 and her valuation report was very professionally prepared".

[70] It is to be noted that the Board's preference related to the 'approach to valuation' as distinct from the actual valuation itself. But even further as regard the actual valuation, this is what the Board said:

"The Board considered that Ms Low's valuation were too high. She relied too much on the sale of similar condominium units in successful condominium projects in the Frigate Bay area. We so not consider that she gave a discount. Due to the fact that the Angelus was a failed and litigation blighted project; the units of which were not freely susceptible to sale by a willing seller in an open market. The very advantageous prices obtained by Mitcham, Sylvester and Nicholls in November 2005 rather suggest values were in free-fall to the valuation date the Board had to determine and consider what as the formula for valuation that was fairest to all parties in this dispute".

[71] In the view of the Court, the foregoing are good and substantial reasons as to why the Board did not accept Ms. Low's valuation, the very essence of the exercise. Despite this the Appellants go on to say that the Board did not give any other reason for departing from Ms. Low's valuation or methodology. This is in essence irrational for there can be no basis in law requiring the Board to give more than one reason for such action unless mandated by statute or the Supreme Law.

[72] The Board between paragraphs 73 and 74 of the Award the Board sets out clear reasoning based on the evidence as the amount of compensation due to be paid to various property owners of the subject lands. It starts with a consideration of the evidence of compatible sales in the Frigate Bay area "provided primarily by Ms Low". It next considered the land. The condominium unit values and then arrived at the total amount of compensation payable by the Government.

[73] The Court agreed with the submission by learned counsel for the respondents that the board arrived at its own conclusion as to values based on the evidence before it as noted above. This is the Board's statutory mandate and it has not been shown that the Board exceeded its mandate by some unlawful act so as to warrant this Court intervention.

[74] This ground therefore fails.

The Interested Parties Grounds of Appeal

[75] The grounds of appeal may be placed in three broad heads:

1. The jurisdiction of the Board of Assessment
2. Matters that concern errors of law made by the Board
3. Constitutional challenges.

Jurisdiction of the Board Ground (a)

[76] This Ground of Appeal reads thus:

> "The Board of Assessment erred in law in taking upon itself the jurisdiction and power to reject the Interested Parties claims which had been accepted by the Authorised Officer and thereby to overrule the decision of the Authorised Officer when there was no longer a question or claim relating to the payment of compensation before the Board of Assessment save and except the question of assessing the quantum of such compensation.

[77] It is common ground that the question of a Board of Assessment arises where the matter of compensation is not agreed upon after negotiations between the relevant Government functionary and the person who claims the land that has been acquired.

[78] Accordingly sections 11 to 17 of the Land Acquisitions Act ("the Act") deal with appointment and powers of the Board. In particular section 14 of the Act mandates the Board to hold a public inquiry; and to the point section 11 and 17 of the Act provide.

> "11 (1) All questions and Claims relating to the payment of compensation under this Act and to the apportionment of such compensation shall, save as hereinafter provided, be submitted to a Board of Assessment in each case in accordance with section 12.
>
> (2) Board of Assessment shall have full power to assess; award and apportion compensation in such cases, in accordance with the provisions of this Act.
>
> 17 (1) At the conclusion of the inquiry the Board shall decide upon the Claims for compensation and apportionments submitted to them and shall make an award under the hand of the chairperson who shall cause the same to be filed in the High Court.
>
> (2) The decision of the majority of the members of the Board with respect to the compensation to be paid shall be deemed to be the decision of the Board, and if all the members of the Board differ, the mean between the amount decided upon by the chairperson and that one of the amounts decided upon by the other two members of the Board which approximates most nearly to the amount decided by the chairperson shall be deemed to be the Board.
>
> (3) An appeal shall lie against [a] decision of the Board to the High Court".

[79] Also relevant are sections 19 to 22 of the Act which regulate the questions of: rules for the assessment of damages, severance, interest and rules as to costs, respectively.

[80] It is abundantly clear from provisions cited that a Board of Assessment appointed in accordance with the Act is fully empowered to award compensation. It is also clear that the Board is not bound by any decision of the Authorized Officer.

Grounds relating to errors by the Board

[81] Ground (b) essentially deals with the failure by the Board to take into account section 6 of the Title by Registration Act; Ground (c) speaks to the reliance by the Board on section 5(2) of the Title by Registration Act; Ground (d) relates on error by the Board in failing to appreciate what B.M.T Limited, the owner, had done in relation to the transfer the titles to the Interested Parties; Ground (f) concerns the Board erring by the Board in failing to take into account "the undisputed" fact that the Interested Parties were prevented from registering their Memorandum of Transfer; Ground (h) speaks to the error of the Board in assuming that they were constrained by law to reach an inequitable result; and ground (i) says that the Board erred in law in disallowing the Interested Parties claim on the objection of the Claimants/Appellants when they were successors in the title of the proprietors of the land in question who transferred their title to the Interested Parties.

[82] Having regard to the grounds of appeal outlined above, it is of utmost importance to re-state the fact that section 17 (3) of the Act grants a right of appeal against a decision of a Board of Assessment. That decision by virtue of Section 17(1) and (2) of the LAA relates to compensation which has been given as an award. With that said, it is the view of this Court that the said grounds of appeal does not and cannot be related to any award of compensation as none was awarded to the Interested Parties.

[83] By and large the grounds concerns errors of law made by the Board which in turn touch and concern vires. For example grounds (b), (c) and (f) dwell on the failure of the Board to take into account certain provisions of the Title by Registration Act and a certain undisputed fact.

[84] In the view of the Court these are matters which the realm judicial review. This view is fortified by the fact that no award was made to the Interested Parties, other than the National Bank.

Matters constitutional

[85] Grounds (l), (m), (n), (o) and (r) of the Interested parties appeal speak in a variety of ways to breach of section 8 the Constitution of Saint Christopher and Nevis.

[86] Learned counsel for Respondents, in view of the content of the grounds of appeal makes a number of submissions. The following are considered to be important:

> "24. At paragraph 33 and 35 of their Appeal, under the heading ***Facts,*** the Interested Parties contend, inter alia, that the ***purported compulsory acquisition*** of their units by the Government was done in breach of ***section 8*** of the ***Constitution*** and contrary to the Constitution protections provided for by this section against the compulsory acquisition of their property without compensation. Further that the ***purported acquisition*** is unconstitutional, void and of no effect in that it contravenes ***sections 3 (c)*** and ***8(1)*** of the ***Constitution***.
>
> 25. It is submitted at the outset that the Interested Parties have not challenged the acquisition by the Government and therefore any reference to the acquisition as a "purported acquisition" is misguided and baseless.

26. It is further submitted that the manner of challenge to a compulsory acquisition ought to be by way of judicial review and such a challenge would only succeed where bad faith and/or irrationality is pleaded and proved. ***[See HMB Holding Limited v Cabinet of Antigua & Barbuda,*** PC Appeal No. 18 of 2006 @pp. 15-17 paras. 29-31].

27. However, if this Honourable Court where to rule that it can maintain a challenge to the acquisition, it is respectfully submitted that there is no allegation of bad faith and/or irrationality and therefore such a challenge must fail.

28. Further, Part 56 of the CPR 2000 mandates that leave must be granted before an Application for Judicial Review can be made. [See Part 56.3 (1) of CPR 2000].

29. Further, the subject lands have been sold to a third party and the Court will refuse relief where the grant of relief would likely to be detrimental to good administration or cause substantial hardship to or substantially prejudice the rights of any person. [See Part 56.5 (2) (a) and (b) of the CPR 2000]

30. It is also respectfully submitted that the Interested Parties ought not to be allowed to both appeal the decision of the Board and challenge the acquisition on the grounds that it is unconstitutional.

31. It is submitted that this approach by the Interested Parties amount to an abuse of the process of the court and their constitutional challenge should fail and they be condemned in costs.

32. Further, the Interested Parties are seeking Declarations that the acquisition by the Government was unconstitutional. They have however failed to file the necessary motions under Part 56 of the CPR 2000 and such a declaration ought not to be granted in this appeal.

33. The procedure outlined in Part 56 of the CPR 2000 must be complied with before a Court can exercise its power in granting the reliefs sought".

[87] The Court agrees entirely with the submission advanced by learned counsel for the Respondents that a constitutional challenge cannot be mounted in the manner attempted by the Interested Parties.

Costs

[88] Given the outcome of the appeals all parties are required to file submissions on costs on or before 27th August, 2011.

RESULT – Appellants' Appeal

Ground 1

[89] With respect to Ground 1 the appeal is allowed and a value of US$243,509.26 is placed on the swimming pool as compensation for common property; and it is hereby Ordered that such compensation is to be apportioned among the successful Claimants by the Board of Assessment as constituted on 31/12/2008 and is to be re-constituted is necessary for this purpose.

Ground 2

[90] Ground 2 is disallowed since the Appellants have not advanced any or any sufficient basis to cause the Court to disturb the Board's determination regarding Block D.

Ground 3

[91] Ground 3 is allowed on the basis that the rate of interest payable by the Board to all successful Claimants is fixed by the Land Adjudication Act at 461 and such rate applies to all compensation for acquired properties even when the property was mortgaged. This was clearly stated by the Board and the mortgage rate of 11% was never entertained.

Grounds 4 and 6

[92] Grounds 4 and 6 are disallowed as no reasoning has been advanced to warrant this Court disturbing the findings of the Board.

Grounds 5 and 7

[93] Ground 5 and 7 are disallowed because the Board arrived at a valuation after a consideration of the evidence before it and without any preference for any particular valuation before it. Further, the Appellants have not shown that the Board in arriving at a valuation did anything that was unlawful or irregular given the nature of a valuation.

RESULT – Interested Parties

[94] The grounds of appeal of the Interested Parties are as they purported to raise Constitutional and other issues other than by the prescribed procedure.

Order accordingly.

ERROL L THOMAS
High Court Judge (Ag)

Printed at the Government Printery, St Kitts, W. I.